

SUBCHAPTER 8. ENGINEERING AND INSTITUTIONAL CONTROLS**7:26E-8.1 General requirements**

(a) The purpose of this subchapter is to present the requirements for the use of engineering and institutional controls as part of remedial actions for contaminated sites.

(b) Any person proposing to use engineering and/or institutional controls shall:

1. Propose a deed notice, pursuant to N.J.A.C. 7:26E-8.2, whenever:

i. Soil contamination will remain above a concentration that would allow for the unrestricted use of the property; or

ii. A ground water remedial action includes containment.

2. Demonstrate in the remedial action workplan submitted to the Department pursuant to N.J.A.C. 7:26E-6.2(a), that:

i. The selected remedial action will remain protective of the public health and safety and of the environment for as long as the contamination exists above a concentration that would allow for the unrestricted use of the property;

ii. Access to the site or area of concern, and human exposure to the contamination at the site or area of concern, can both be controlled when necessary to ensure the protectiveness of the remedial action; and

iii. The current and planned future uses of the site or area of concern will be consistent with all engineering and institutional controls; and

3. Monitor each engineering and institutional control until such time that the Department approves in writing the removal of the control.

(c) In evaluating the protectiveness of a remedial action that includes an engineering and/or institutional control, the Department will consider site-specific conditions, including, but not limited to:

1. The concentration of contaminants;

2. The mobility and toxicity of the contaminants;

3. The presence of free and/or residual product, off-spec or discarded product or by-product from a manufacturing or industrial process, containerized wastes, or buried waste;

4. The current surrounding land uses;

5. The implementability of the control over the long term; and
6. Any other factors that are relevant to evaluating the protectiveness of the remedial action.

7:26E-8.2 Deed notice requirements

(a) The person responsible for conducting the remediation of a site that includes a soil remedial action that includes a proposed deed notice shall:

1. If that person is the owner of the site, record a deed notice for the site pursuant to (c) and (d) below; or
2. If that person is not the owner of the site provide the Department documentation of the owner's consent to record the necessary deed notice pursuant to (b) below.

(b) The person responsible for conducting the remediation that proposes a remedial action that includes a deed notice shall provide the Department with a copy of the property owner's consent to record a deed notice as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2(a)16, as follows:

1. If the property owner is any local, county, state or federal government agency, and a deed is not associated with the property, such as roads and sidewalks, then the person responsible for conducting the remediation shall submit written documentation of the owner's agreement to provide notice pursuant to (c) below as follows:
 - i. For a municipality, then the written agreement shall be in the form of a formal resolution by the municipal government;
 - ii. For a county, then the written agreement shall be in the form of a formal resolution by the county freeholders; or
 - iii. For a State or Federal governmental agency, the head of the agency or their designee shall sign the written agreement; or
2. If the property owner is any other person than the person responsible for conducting the remediation, then the person responsible for conducting the remediation shall provide the Department with written documentation of the owner's agreement to record a deed notice for the site.

(c) The person responsible for conducting the remediation proposing a remedial action that requires the owner of the site to record a deed notice, shall comply with the following procedures for drafting a deed notice for the Department's approval as follows:

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1. For a property that is owned by a local, county, state or federal government agency (except as provided in 2 below), and no deed is associated with the site, the person responsible for conducting the remediation shall submit a draft notice worded pursuant to (d) below, to serve as the notice in lieu of a deed notice;

2. For a property that is owned by the U.S. Department of Defense, and no deed is associated with the site, the person responsible for conducting the remediation shall draft an amendment to the Base Master Plan or Land Use Control Assurance Plan worded pursuant to (d) below, to serve as the notice in lieu of a deed notice; or

3. For a property that is owned by any person not described in (c) 1 or 2 above, then the person responsible for conducting the remediation shall provide the Department with a draft deed notice pursuant to (d) below.

(d) The person responsible for conducting the remediation who elects to use a deed notice as part of a remedial action for a contaminated site shall submit a draft deed notice to the Department, as part of the remedial action work plan pursuant to N.J.A.C. 7:26E-6.2(a)16, that:

1. Is worded exactly as the model document in N.J.A.C. 7:26E, Appendix E; and

2. Includes copies of all required maps that:

i. Are compatible with the "New Jersey Department of Environmental Protection Mapping the Present to Protect New Jersey's Future: Mapping and Digital Data Standards," in N.J.A.C. 7:1D, Appendix A;

ii. Are compatible with the most recent version of the Department's "Guidance for the Submission and Use of Data in GIS Compatible Formats Pursuant to "Technical Requirements for Site Remediation" at <http://www.state.nj.us/dep/srp/regis/techgis/techgis05.htm>;

iii. Are on 8.5" x 11" paper (using multiple sheets if necessary);

iv. Are scaled at one inch to 200 feet or less;

v. Are clean, clear, and legible; and

vi. Include:

(1) A bar scale;

(2) A north arrow;

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(3) A legend;

(4) The applicable Program Interest name and number (Preferred ID);

(5) Tax Block and Lot numbers; and

(6) The date prepared.

(e) The person responsible for conducting the remediation who proposes to use a deed notice as part of a remedial action for a contaminated site shall submit a final draft of the deed notice to the Department as part of the remedial action report pursuant to N.J.A.C. 7:26E-6.6, unless the Department directs its submission at an earlier time.

(f) Within forty-five (45) calendar days after the receipt of the Department's written approval of the final deed notice submitted pursuant to (e), above, the person responsible for conducting the remediation shall comply with the following as applicable:

1. If there is a deed for the property, have the owner of the property record the deed notice with the office of each county recording officer responsible for recording deeds for each county in which the site is located;

2. If the property to which the notice applies is a local, county or state roadway, provide a paper copy of the document referenced in N.J.A.C. 7:26E-8.2(c)1, and an electronic copy in a read only format, including all of the exhibits, to the following, as applicable:

i. Each road department of each municipality in which the site is located;

ii. Each road department of each county in which the site is located;

iii. The New Jersey Department of Transportation; and

iv. Utility companies with easements on the roadway, and

3. In all other circumstances, provide a paper copy of the recorded deed notice, stamped "Filed", or notice, as applicable, and an electronic copy in a read only format, including all of the exhibits, to those individuals and groups listed in (g) below.

(g) Within forty-five (45) calendar days after receipt of the Department's written approval of the final deed notice submitted pursuant to (e), above, provide, as applicable, a paper copy of the recorded deed notice or document referenced in N.J.A.C. 7:26E-8.2(c)1, and an electronic copy in read only format, including all exhibits, to the following:

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1. The Department's assigned case manager;
2. The municipal clerk, mayor and town council of each municipality in which the site is located;
3. The local, county, and regional health department in each municipality and county in which the site is located;
4. Each gas, electric, water, sewer, cable company and all other utilities that service the site or have a license or easement to cross the site;
5. The New Jersey Realtors Association;
6. The Pinelands Commission if the site is located within an area subject to the jurisdiction of the Pinelands Commission; and
7. Any other person who requests a copy.

(h) Any person who chooses to redevelop or change the use of a site in a manner inconsistent with a remedial action that includes an engineering and/or institutional control, or conduct additional remediation or other activities that may compromise the integrity of an engineering control, such that the remedy no longer meets the applicable health risk standard, or is no longer protective of public health, safety and of the environment, shall obtain the Department's prior written approval of such activities as follows by submitting :

1. A memorandum of agreement application, pursuant to N.J.A.C. 7:26C-3, for the Department's oversight of activity, if the person is not already subject to the Department's oversight for the site;
2. A remedial action workplan pursuant to N.J.A.C. 7:26E-6.2 prior to implementation of such activities; and
3. A request to the Department, pursuant to (i) below, to remove or modify, as appropriate, the declaration of environmental restrictions or deed notice.

(i) Any person may submit a written request along with the memorandum of agreement application, at the address provided at N.J.A.C. 7:26C-1.4(e), to remove or modify a remedial action that includes an engineering and/or institutional control. The person shall submit a copy of the existing deed notice or declaration of environmental restrictions stamped "filed" and the reason for the removal or modification based on the following:

1. The performance of subsequent remediation;

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2. A change in conditions at the site;
3. The Department's revision of soil remediation standards; or
4. A change in the maintenance or monitoring requirements in this Chapter.

(j) The Department will evaluate the request submitted pursuant to (h) above and within 90 calendar days after the Department's receipt of the written request will either:

1. Approve the request with the condition that:

- i. The property owner records with the office of each county recording officer, pursuant to N.J.A.C. 7:26E-8.2(f), a notice executed by the Department, that the use of the site is no longer restricted or that the restriction has been changed and that the declaration of environmental restrictions or deed notice is therefore either terminated or modified. Any Department approved modified declaration of environmental restrictions or deed notice delineating the new restrictions shall be recorded pursuant to N.J.A.C. 7:26E-8.2;

- ii. The applicant provides written notice to each municipality in which the site is located, with a copy to the Department sent to the address provided at N.J.A.C. 7:26C-1.4, of the removal or change of the restrictive use conditions;

- iii. The applicant provides an electronic copy in a read only format, of all information required in N.J.A.C. 7:26E-8.2(c), for the approved modified declaration of environmental restrictions or deed notice as required pursuant to N.J.A.C. 7:26E-8.2(f) and (g); or

2. Issue a written denial of the request.

7:26E-8.3 Ground water classification exception areas

(a) A ground water classification exception area serves as an institutional control by providing notice that there is ground water pollution in a localized area caused by a discharge at a contaminated site. The area and depth of ground water pollution will be determined based on actual ground water contamination, as well as, fate and transport modeling. The Department will establish a ground water classification exception area as part of a remedial action for ground water at a contaminated site when the ground water does not meet the ground water quality standards, pursuant to N.J.A.C. 7:9-6.

(b) The person responsible for conducting the remediation shall submit the following information to the Department as part of the remedial action workplan pursuant to N.J.A.C. 7:26E-6.2:

1. For each ground water sampling point, a list of all contaminants and their concentrations, that do not meet the groundwater quality standards, from the most recent 24 months of ground water sampling;

2. A description of the fate and transport of the contaminant plume, using the most mobile and persistent contaminants present that exceed the ground water quality standards, including:

i. The horizontal and vertical distances that the contaminated ground water plume is expected to travel before contaminant concentrations decrease to or below the applicable ground water quality standards;

ii. A proposed expiration date for the classification exception area; and

iii. All other information required by Appendix F;

3. The following maps consistent with the requirements of N.J.A.C. 7:26E-8.2(d)2;

i. A USGS Quadrangle map (paper copy only), indicating the location of the site;

ii. A map, in paper and electronic formats, indicating the predicted extent of the ground water contaminant plume; and

iii. A map (paper copy only) showing all properties, according to tax block and lot with a reference to the year of the referenced tax map, under which the contaminant plume is located and is expected to migrate;

4. Information regarding current and projected use of the ground water in the aquifer(s) in which the ground water classification exception area is located, as follows:

i. The current ground water use based on the most recent well search conducted pursuant to this chapter; and

ii. The future ground water use for a 25-year planning horizon based on the following, without limitation:

(1) The New Jersey Water Supply Master Plan;

(2) Department of Environmental Protection, Bureau of Water Allocation;

(3) Municipal master plans;

(4) Zoning plans;

(5) Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines;

(6) Local planning officials;

(7) County and local boards of health; and

(8) Local and/or county ordinances restricting installation of potable wells.

5. Copies of the certified letters, return receipt requested, notifying the following persons of the need to establish the ground water classification exception area:

i. The municipal and county clerks for each municipality and county in which the ground water classification exception area will be located;

ii. The local, county and regional health department for each municipality and county in which the ground water classification exception area will be located;

iii. The designated County Environmental Health Act agency for each county in which the ground water classification exception area will be located;

iv. The county planning board for each county in which the ground water classification exception area will be located;

v. The Pinelands Commission if the ground water classification exception area will be located within the jurisdiction of that Commission;

vi. New Jersey Department of Environmental Protection, Water Supply Administration:

(1) Bureau of Safe Drinking Water; and

(2) Bureau of Water Allocation; and

vii. If the ground water classification exception area is located in a ground water use area, each owner of any real property within the ground water classification exception area.

(c) The Department will establish a ground water classification exception area based upon the projected area of the contaminant plume in the ground water, pursuant to (b), above.

(d) The Department may revise or reestablish a ground water classification exception area at any time to more accurately reflect ground water conditions using any relevant data, including any data submitted along with the certification required by N.J.A.C. 7:26E-8.6.

(e) The Department will remove a ground water classification exception area based upon ground water data, collected pursuant to N.J.A.C. 7:26E-8.6(a)7, that indicate that the contaminant concentrations in the ground water meet all of the applicable ground water quality standards.

7:26E-8.4 Monitoring, maintenance, and biennial certification - who has obligation and when

(a) The persons responsible for monitoring the protectiveness of a remedial action that includes an engineering and/or institutional control and for submitting the biennial certifications pursuant to this subchapter include, without limitation, each of the following:

1. Any person with a legal obligation to conduct the remediation, including, without limitation, each of the following:

i. A person in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., for the hazardous substance that was the subject of the remedial action that includes the engineering and/or institutional control;

ii. The owner of the site of the discharge at the time of the remedial action that includes the engineering and/or institutional control;

iii. An owner or operator that triggered the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., for the industrial establishment that was the subject of the remedial action that includes the engineering and/or institutional control;

iv. An owner or operator of an underground storage tank that was the subject of the remedial action that includes the engineering and/or institutional control;

v. A holder of a security interest in the site, who actively participated in the management of the site or underground storage tank facility, that was the subject of the remedial action that includes the engineering and/or institutional control; or

vi. A holder of a security interest in the site, who negligently caused a new discharge at the site after the date of foreclosure on a security interest in the site or the underground storage tank facility, that was the subject of the remedial action that includes the engineering and/or institutional control;

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2. Once the engineering or institutional control is in place, each owner, lessee and operator of any property that is subject to an engineering or institutional control; this obligation may be limited to the period of that person's ownership, tenancy, or operation depending on that person's continuing liability of the remediation pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11gd

(b) The obligations in this subchapter for the monitoring, maintenance and certifying the protectiveness of remedial actions that include engineering and/or institutional controls apply to all of the persons described in (a) above, for sites with an engineering or institutional control that continues in effect after [THE EFFECTIVE DATE OF THIS AMENDMENT], regardless of the date the control was established.

(c) The persons responsible for monitoring the protectiveness of a remedial action that includes an engineering and/or institutional control shall submit to the Department a certification, pursuant to this section and consistent with N.J.A.C. 7:26C-1.2 (a)1, according to the following schedule:

1. For a deed notice and any engineering controls that are described in the deed notice, every two years on the anniversary of the date stamped on the deed notice that indicates when the deed notice was recorded;

2. For a ground water classification exception area, every two years on the anniversary of the date that the Department established the ground water classification exception area; and

3. For all other engineering and institutional controls, every two years on the anniversary of when the engineering or institutional control was in place for the site.

(d) The persons responsible for submitting biennial certifications for sites with multiple engineering and/or institutional controls for the remediation of contaminated soil at a site shall:

1. Submit one biennial certification for all remedial actions and all engineering and institutional controls for the site; and

2. Submit to the Department the first biennial certification when the first biennial certification is due to the Department pursuant to (c) above, and biennially thereafter on that same date.

(e) Submissions required pursuant to this subchapter shall be made to the Department as follows:

1. For deed notices and related engineering controls as follows:

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i. If the Department continues to oversee any aspect of the remediation at the site, submit information to the following address:

Department of Environmental Protection
Division of Remediation Management and Response
(Insert name of Bureau overseeing the remediation)
P.O. Box 028
401 E. State Street
Trenton, NJ 08625-0028

ii. If the Department has issued no further action letters for all areas of concern at the site, submit information to the following address:

Department of Environmental Protection
Division of Remediation Management and Response
Bureau of Operation, Maintenance, and Monitoring
Deed Notice Inspection Program
P.O. Box 413
401 E. State Street
Trenton, NJ 08625-0413

2. For ground water classification exception areas, submit information to the Bureau that established the ground water classification exception area as follows:

Department of Environmental Protection
Division of Remediation Management and Response
(Insert name of appropriate Bureau)
P.O. Box 028
401 E. State Street
Trenton, NJ 08625-0028

7:26E-8.5 Monitoring, maintenance, and biennial certification - requirements for deed notices and declarations of environmental restrictions

(a) The persons responsible for monitoring the protectiveness of a remedial action that includes a deed notice or declaration of environmental restrictions shall:

1. Determine whether any actual or pending zoning or land-use change is consistent with the use restrictions in the deed notice or declaration of environmental restrictions or could undermine the protectiveness of the remedial action that includes a deed notice or declaration of environmental restrictions in a manner such that could prevent:

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i. The remedial action which includes the engineering and/or institutional controls from meeting the applicable health risk standard, see, N.J.S.A. 58:10B-12g(3)(b); and

ii. The remedial action, which includes the engineering and/or institutional controls, from continuing to be protective of public health, safety, and of the environment, see, N.J.S.A. 58:10B-12g.

2. Conduct periodic inspections of the site to identify whether:

i. Any excavation or other disturbance activities have taken place within the restricted areas; and

ii. Any disturbances of the soil at the site have resulted in unacceptable exposure to the soil contamination;

3. Compare New Jersey laws, remediation standards, and other regulations applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws, regulations or remediation standards to determine whether:

i. Any changes in applicable laws, regulations, or remediation standards have occurred; and

ii. Each engineering and/or institutional control comply with the requirements of the new laws and regulations; and

4. Develop a detailed log of how the persons responsible for monitoring the protectiveness of the remedial action have maintained and evaluated the engineering control in compliance with this section. The log shall be completed for the time since the first certification due date pursuant to N.J.A.C. 7:26E-8.4(e), or the last certification and monitoring report was submitted to the Department, whichever is more recent.

(b) The persons responsible for monitoring the protectiveness of a remedial action shall prepare a monitoring report that includes the following information:

1. The name, address and telephone number of the person responsible for maintaining the engineering and institutional controls;

2. Site identifiers (as applicable):

i. Program Interest Name;

ii. Program Interest Number (Preferred ID);

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- iii. ISRA ID Number;
 - iv. Case No. or Incident Report Number;
 - v. UST Registration Number;
 - vi. Date of each no further action letter for the site;
 - vii. Name of the Department's Case Manager for the site at the time of each no further action letter;
 - viii. Street address;
 - ix. Tax block and lot number; and
 - x. Name of each municipality and county in which the site is located;
3. A description of the:
 - i. Physical characteristics of the site; and
 - ii. The current site operations;
 4. A description of each remedial action for the site that included the deed notice or declaration of environmental restrictions;
 5. The results of the comparison of applicable laws and regulations pursuant to (a)5 above;
 6. The maintenance and evaluation log for each engineering control pursuant to (a)6 above;
 7. The dates and results of inspections and maintenance, including all test and sampling results, of each engineering and/or control;
 8. A description of any changes in applicable laws, regulations or remediation standards and a proposal for all changes in the remedial action to comply with those changes;
 9. A description of any additional action taken to ensure the protectiveness of the remedial action; and

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10. A conclusion as to whether each remedial action that includes an engineering and/or institutional control remains protective of the public health and safety and the environment.

(c) The persons responsible for monitoring the protectiveness of a remedial action shall:

1. Certify to the Department that:

i. The deed notice or declaration of environmental restrictions, including all engineering controls, is being properly maintained; and

ii. The remedial action that includes the deed notice or declaration of environmental restrictions continues to be protective of the public health and safety and the environment;

2. Include with the certification a written monitoring report pursuant to (b) above, along with an electronic copy of the monitoring report and certification, in a read only format acceptable to the Department;

3. Submit the certification and the report required by (c)2 above, according to the schedule in N.J.A.C. 7:26E-8.4(c), to:

i. The municipal and county clerks for each municipality and county in which any property included in the deed notice or declaration of environmental restrictions is located;

ii. The local, county and regional health department for each municipality and county in which any property included in the deed notice or declaration of environmental restrictions is located;

iii. Each owner of the property which is included in the deed notice or declaration of environmental restrictions; and

iv. The Department, at the appropriate address as indicated in N.J.A.C. 7:26E-8.4(e)7, along with the name and address of each person that was sent a copy of the certification pursuant to i. through iii. above.

(d) If the person(s) having the obligation for complying with this section pursuant to N.J.A.C. 7:26E-8.4(a)2 changes:

1. The person who is relinquishing the obligation shall notify the Department of the name, address and telephone number of the person assuming the responsibility and the effective date of the change;

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2. The person who is assuming the obligation to comply with (c), above, shall submit a letter signed and certified pursuant to N.J.A.C. 7:26E-1.5, stating that he/she is assuming the obligation for compliance with (a) through (c), above; and

3. The letters required by (d)1 and 2 above shall be submitted to the Department within 30 days of the effective date of the change.

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(a) The persons responsible for monitoring the protectiveness of a remedial action that includes a ground water classification exception area shall:

1. Compare the laws, Ground Water Quality Standards, and other regulations, applicable at the time the Department established the ground water classification exception area, with any relevant subsequently promulgated or modified laws or regulations to determine whether:

i. Any subsequently promulgated or modified laws or regulations apply to the site;

ii. Each ground water classification exception area complies with the requirements of the new laws and regulations;

2. Determine whether there are any planned changes within the 25-year water use planning horizon for the aquifer(s) in which the ground water classification exception area is located since the Department established the ground water classification exception area or the last completed biennial review, whichever is more recent. This determination shall be made by reviewing all plans, records and other relevant information from the following sources, without limitation:

i. The New Jersey Water Supply Master Plan;

ii. Department of Environmental Protection, Bureau of Water Allocation;

iii. Municipal master plans;

iv. Zoning plans;

v. Local water purveyor plans and planning data pertaining to the existence of water lines and proposed future installation of water lines;

vi. Local planning officials;

vii. Local and county ordinances restricting installation of potable wells; and

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viii. County and local boards of health;

3. Identify whether there have been any actual changes in the ground water use in the water use planning area since the Department established the ground water classification exception area or the last completed biennial review, whichever is more recent. Identify changes by:

i. Completing a Department computer generated well search (contact the Bureau of Water Allocation) for all wells within one mile up-gradient, side-gradient and down-gradient of the ground water classification exception area; and

ii. Identifying all wells, other than ground water monitoring wells, installed within one mile up-gradient, side-gradient and down-gradient of the ground water classification exception area since the Department established the ground water classification exception area or the last completed biennial review, whichever is more recent;

4. Inspect all ground water monitoring wells associated with the ground water classification exception area and maintain a log for each monitoring well as follows:

i. Inspect the physical integrity of each well including, determining:

(1) The identification, integrity, and location of the well;

(2) The presence of a functioning pad lock; and

(3) The presence of any additional security measures such as a fence or patrolling of the site;

ii. Report to the Department, pursuant to N.J.A.C. 7:26E-4.4(g)11 any damaged monitoring wells and either repair or decommission damaged monitoring wells pursuant to N.J.A.C. 7:9D or replace the monitoring wells, as necessary; and

iii. For monitoring wells used to establish the ground water classification exception area that have been decommissioned pursuant to N.J.A.C. 7:9D, a copy of the well closure report shall be included with the first report, pursuant to (b)7 below, submitted after each well is decommissioned;

5. Identify any land use disturbance, such as the installation of a detention basin, that may intercept the water table within the area of the ground water classification exception area that could result in a contaminated discharge to surface water. If any such disturbances are identified, sample the ground water/surface water

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downgradient and proximate to the land use disturbance to determine whether the ground water meets the more stringent of either:

- i. The New Jersey Surface Water Quality Criteria, N.J.A.C. 7:9B; or
- ii. The Federal Surface Water Quality Criteria, 40 CFR Part 131;

6. Determine whether:

- i. Any of the actual or proposed changes in the ground water use identified pursuant to 2 and 3 above, have influenced or may influence the protectiveness of the remedial action that includes the ground water classification exception area; and
- ii. There is a need to reevaluate the fate and transport of the ground water contamination plume and to revise the ground water classification exception area to ensure that the remedial action remains protective of the public health and safety and the environment; and

7. Assess ground water quality as follows:

- i. Within 120 calendar days after the projected expiration of the ground water classification exception area, collect at least two rounds of ground water samples such that the time between sampling events shall account for seasonal fluctuations in the ground water table and the number of ground water samples collected are representative of the entire horizontal and vertical extent of the ground water classification exception area;
- ii. Evaluate the results of the ground water sampling conducted pursuant to 7i above, to determine whether the contaminant concentrations in the ground water have either:
 - (1) Decreased to or below the applicable ground water quality standards throughout the entire classification exception area; or
 - (2) Not decreased to or below the applicable ground water quality standards throughout the entire classification exception area; and
- iii. At any other time prior to the projected expiration of the ground water classification exception area, ground water sampling is optional to determine whether the ground water meets the applicable ground water quality standards. The number of samples collected and the time between sampling events shall be consistent with 7i above. If ground water samples indicate that contaminant concentrations have decreased to or below the applicable ground water quality standards throughout the ground water classification exception area, then any

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person may request that the Department remove the ground water classification exception area.

(b) The persons responsible for evaluating the protectiveness of a remedial action that includes a ground water classification exception area shall prepare a monitoring report that includes the following:

1. The name, address and telephone number of the person responsible for preparing the report;

2. Site identifiers, as applicable:

i. Program Interest name and number (Preferred ID);

ii. ISRA ID Number;

iii. Case Number or Incident Report Number;

iv. UST Registration Number;

v. Date of each no further action letter for the site;

vi. Street address;

vii. Tax block and lot number and the year of the tax map from which this information is obtained; and

viii. Name of each municipality and county in which the site is located;

3. A description of:

i. The physical characteristics of the site;

ii. The current site operations; and

iii. Each remedial action that includes a ground water classification exception area;

4. The results, in table format, of the comparison of applicable laws and regulations pursuant to (a)1, above;

5. The results of the evaluation of the changes in ground water use conducted pursuant to (a)2 and 3 above;

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6. The maintenance and evaluation log for each monitoring well pursuant to (a)4 above, including:

i. A copy of any report submitted to the Department, pursuant to N.J.A.C. 7:26E-4.4(g)11, concerning damaged monitoring wells; and

ii. A copy of the well closure report for each monitoring well used to establish the ground water classification exception area that has been decommissioned pursuant to N.J.S.A. 58:4A and N.J.A.C. 7:9D since the Department established the ground water classification exception area or the last completed biennial review, whichever is more recent;

7. For each land use disturbance identified pursuant to (a)5, above:

i. A description of the disturbance;

ii. The results of all ground water sampling required pursuant to (a)5, above; and

iii. A discussion of whether the ground water meets the more stringent of either:

(1) The New Jersey Surface Water Quality Criteria, N.J.A.C. 7:9B; or

(2) The Federal Surface Water Quality Criteria, 40 CFR Part 131;

8. A discussion of whether:

i. Any of the actual or proposed changes in the ground water use have influenced or may influence the protectiveness of the remedial action that includes the ground water classification exception area; and

ii. There is a need to reevaluate the fate and transport of the ground water contamination plume and to revise the ground water classification exception area to ensure that the remedial action remains protective of the public health and safety and the environment;

9. When ground water sampling is required pursuant to (a)7, above, present and evaluate the contaminant concentrations in the ground water to determine whether the concentrations have either:

i. Decreased to or below the applicable ground water quality standards throughout the entire classification exception area; or

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ii. Not decreased to or below the applicable ground water quality standards throughout the entire classification exception area;

10. A description and map of a proposed revised ground water classification exception area, in both paper and electronic format consistent with the requirements of N.J.A.C. 7:26E-8.2(d)2, if ground water monitoring pursuant to this subchapter indicates that a revision to the ground water classification exception area is necessary;

11. The dates and results of inspections and maintenance, including all test and sampling results, of each ground water classification exception area; and

12. A description of any additional action taken to ensure the protectiveness of the remedial action that includes the ground water classification exception area; and

13. For the first biennial certification required after the projected expiration of the ground water classification exception area, if the contaminant concentrations in the ground water have not decreased to or below the applicable ground water quality standards throughout the classification exception area, the person responsible for evaluating the protectiveness shall submit:

i. A narrative, detailing why ground water contamination is still present; and

ii. A re-evaluation of the ground water quality standards pursuant to N.J.A.C. 7:26E-8.3(b), based on the current configuration of the ground water contaminant plume.

(c) The persons responsible for monitoring the protectiveness of a remedial action that includes a ground water classification exception area shall:

1. Certify in a format acceptable to the Department that, based upon the monitoring report required pursuant to (b), above, the ground water classification exception area continues to provide notice of the ground water contamination and the remedial action continues to be protective of the public health and safety and the environment;

2. Submit a report pursuant to (b), above, in both paper copy and in electronic format acceptable to the Department; and

3. Submit the certification and the report required by (c)1 and 2, above, according to the schedule in N.J.A.C. 7:26E-8.4, to:

i. Each external agency that the Department copied when it established the ground water classification exception area;

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ii. Each property owner that the Department copied when it established the ground water classification exception area; and

iii. The Department, at the address in N.J.A.C. 7:26E-8.4, along with the name and address of each person that was sent a copy of the certification pursuant to i and ii, above.

7:26E-8.7 Monitoring, maintenance, and biennial certification - engineering and institutional controls

(a) The persons responsible for monitoring the protectiveness of a remedial action that includes any other engineering or institutional control not included in N.J.A.C. 7:26E-8.5 or 8.6 shall:

1. Monitor each institutional control by:

i. Conducting periodic inspections of the site to ensure that:

(1) The use of the site is consistent with any restrictions in the institutional control; and

(2) The institutional control and the remedial action of which it is a part continue to be protective of the public health and safety and of the environment; and

ii. Evaluating any actual or pending zoning or land-use changes that could undermine the protectiveness of any remedial action for the site;

2. Monitor each engineering control by:

i. Periodically reviewing the documented operation and maintenance records for each engineering control according to the requirements included in the deed notice;

ii. Conducting periodical inspections of each engineering control to determine:

(1) The integrity, operability, and effectiveness of the engineering control; and

(2) Whether the engineering control and the remedial action, of which it is a part, continue to be protective of the public health and safety and of the environment.

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3. Compare the laws, remediation standards and other regulations applicable at the time the engineering or institutional control was established with any subsequently promulgated or modified laws, regulations or remediation standards to determine whether or not:

i. Any subsequently promulgated or modified laws or regulations apply to the site;

ii. Each engineering and/or institutional control in place for the site meet those new laws and regulations; and

4. Develop a detailed log of how the persons responsible for monitoring the protectiveness of the remedial action that includes an engineering control have maintained and evaluated the engineering controls in compliance with this section, since the first certification due date pursuant to 7:26E-8.4(d), or the date the persons responsible submitted the last certification and monitoring report to the Department, whichever is more recent.

(b) For each engineering and institutional control, the persons responsible for monitoring the protectiveness of a remedial action that includes any other engineering or institutional control not included in N.J.A.C. 7:26E-8.5 or 8.6 shall prepare a monitoring report that includes the following information:

1. The name, address and telephone number of each person responsible for maintaining the engineering and/or institutional control;

2. Site identifiers (as applicable):

i. Program Interest Name;

ii. Program Interest Number (Preferred ID);

iii. ISRA ID Number;

iv. Case Number or Incident Report Number;

v. UST Registration Number;

vi. Date of each no further action letter for the site that included an engineering and/or institutional control;

vii. Name of the Department's Case Manager for the site at the time of each no further action letter;

viii. Street address;

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ix. Tax block and lot number; and

x. Name of each municipality and county in which the site is located;

3. A description of the:

i. Physical characteristics of the site; and

ii. The current site operations;

4. A description of each remedial action for the site that included an engineering or institutional control;

5. The results of the comparison of applicable laws and regulations pursuant to (a)3, above;

6. The maintenance and evaluation log for each engineering control pursuant to (a)4, above;

7. The dates and results of all inspections and maintenance, including all test and sampling results, of each engineering and/or institutional control;

8. A description of any additional action taken to ensure the protectiveness of the remedial action that includes the engineering and/or institutional control; and

9. A conclusion as to whether each remedial action that includes an engineering and/or institutional control remains protective of the public health and safety and of the environment.

(c) The persons responsible for monitoring the protectiveness of a remedial action that includes any other engineering or institutional control not included in N.J.A.C. 7:26E-8.5 or 8.6 shall:

1. Certify to the Department that:

i. Each engineering and institutional control is being properly maintained; and

ii. The remedial action that includes the engineering and institutional controls continues to be protective of the public health and safety and of the environment;

2. Include with the certification a written monitoring report pursuant to (b), above, along with an electronic copy of the monitoring report and certification, in a read only format acceptable to the Department;

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3. Submit the certification to the Department pursuant to the schedule and address in 7:26E-8.4(e)1.